

UTILITY CONSUMER PARTICIPATION BOARD

April 2, 2007

MINUTES

A meeting of the Utility Consumer Participation Board was held Monday, April 2, 2007 in the Ottawa Building, 4th Floor Training Room, Lansing, Michigan.

I. Call to Order

Vice Chairman Ron Rose acting as Chairman called the meeting to order at 10:18 a.m. Board members present: Ron Rose, Sister Monica Kostielney and Alexander Isaac (via telephone). Members absent: Chairman Harry Trebing and Marc Shulman. Other representatives in attendance: Special Assistant to the Board Michelle Wilsey; DLEG staff Terri Eklund (finance); Donald Keskey, attorney for MCAAA and MEC/PIRGIM; David Shaltz, attorney for the Residential Ratepayer Consortium; John Liskey, Attorney General's office; and Hearings Reporter Tim Sturgis.

II. Agenda

Kostielney moved, second by Isaac and motion carried to approve the agenda with the addition of Keskey appeal under new business.

III. Minutes

Isaac moved, second by Kostielney and motion carried to approve the minutes of February 5, 2007 with the addition of the phrase (last page, paragraph before new business), "and a second report for MCAAA for the 2005 and 2006 grants" describing the Keskey submissions.

IV. Correspondences

Acting Chairman Rose reported that the following correspondences were received and placed on file:

1. FERC Case status report dated April 1, 2007 from Don Keskey regarding application by Consumers Energy, Energy Palisades, et. al.
2. MPSC Case status report dated April 1, 2007 from Don Keskey regarding CEC Energy Palisades, LLC, purchased power.
3. Case status report dated March 29, 2007 from David Shaltz, RRC.
4. Letter of appeal of administrative decision regarding billings from Don Keskey.
5. Major action summary of February 5, 2007 UCPB Board meeting, submitted by Michelle Wilsey.
6. Case status report dated April 2, 2007 from Don Keskey.
7. UCRF Financial Report dated April 2, 2007 from Terri Eklund, DLEG.
8. Billing status report dated April 2, 2007 from RRC.

V. Reports

A. Grantees

1. David Shaltz discussed case status report dated March 29, 2007. Grant number UCRF 06-04 is still open. It covers 2006-07 GCR Plan cases and the 2005-2006 GCR reconciliation cases. Five of eight cases covered by the grant are completed. Three reconciliation cases are still in litigation. The MichCon Gas and Aquila Networks-MGU reconciliation cases should be completed by July 2007. SEMCO Energy Gas Company reconciliation case is still being litigated. The grant originally had an end date of December 2006 but was extended to July 2007 because the case schedule was extended. A summary of results was provided for the closed cases. A summary of requested disallowances was provided for the open cases. The summary of

billings for UCRF 06-04 indicates billings through February 2007. It is under review by the client and if approved will be submitted to DLEG later this week.

Grant UCRF 07-01 is open. The four major gas companies are expected to file 2007-08 GCR Reconciliations at the end of June. The next billing on the grant will be submitted approximately April 15, 2007. More information on case issues should be available at the next meeting following discovery and coordination with the Attorney General.

Isaac asked about the operational aspect of the case process. If the project is completed then you indicate that in the final report and submit an invoice for the final 15%? Shaltz responded that, according to the agreement, the Department will not pay the final 15 percent of the grant until a complete, final written narrative performance report on the entire grant is provided. Isaac asked if the project is extended, will they come ask for new money for the project? Shaltz responded that under the terms of the grant they will not ask for additional funds. They will manage the funds through completion. Insufficient funds or overages are absorbed by the grantee. Isaac noted that the grant cycle and cases do not match. Shaltz concurred. He again asked when, as far as Mr. Shaltz's firm is concerned, do they bill for the final 15%? Shaltz responded that is submitted with the final performance report. Rose noted that this was an issue for the board. Shaltz suggested that with the new board reporting requirements, that the grantees could report at the time a case concludes as to the claim for each case. The board then would have a running total. When the report is submitted, the board can question grantee about the claim and request additional supporting information if needed. Shaltz committed to incorporating this suggestion into his next report. Rose asked for a summary of any pro bono work done as well. Shaltz agreed. Isaac asked if the grant proposals include in kind contributions or other sources of funding. Shaltz said no but on other forms he has to report total amount of funds for grant funded activity. The UCRF form does not reflect pro bono work. It would be hard to project but could be tracked and included in the final performance report. Wilsey noted that some grant billings have exceeded grant authorizations. The bill was paid up to the total amount authorized. The deficit is pro bono or absorbed by the grantee.

Don Keskey provided a docket chart. He indicated that in the future he would provide bullet points in writing under each docket. Wilsey requested that all grantees include both the case reference and corresponding UCRF grant reference in future reports. Keskey agreed. He noted that they list cases as they extend under subsequent grants. Wilsey noted that including these grant references (original and subsequent authorizations) is important. Keskey noted that U-13060 and Court of Appeals cases started with a grant issued in 2002 GCR and ended with a Court of Appeals' decision on November 22, 2006. It resulted in a cooperative effort by the interveners and the Commission and produced a ratepayer refund of approximately \$26 million. No appeals have been filed so it is a final decision. U-13902, U-13902R and Court of Appeals was the 2004 GCR for MichCon. It is in the Court of Appeals pending a decision. The primary concerns are the over reliance by the Commission on national NYMEX gas index as a substitute for review of book cost of the utility for providing gas and the failure of the utility and Commission to provide advance notice in the service territory of a requested rate increase over what was filed and noticed to the public. U-14401, U-14401R cases involved the 2005 GCR for MichCon that was settled in October 2005 and the reconciliation case that is still in hearings. U-14403, U-14403R, Court of Appeals is Consumers 2005 GCR plan. The appeal issues are the NYMEX index, failure to provide notice, and an emergency rate increase during the hurricane season, New Orleans disaster even though it did not correlate directly with Consumers' actual cost since they had substantial lower price gas in storage. U-14716, U-14717 are the 2006 GCR cases for MichCon and Consumers Energy. They are both final. Pilot programs for energy efficiency and gas conservation were not accepted. U-14800, U-15042 is a consolidated case which includes a gas storage decrement issue. There is no resolution yet. Rose asked if this is a case of first impression in this jurisdiction. Keskey responded no, case U-13060 previously dealt with decremented gas. MSB/PIRGIM Act 141 study is completed and will be made available

electronically. U-13771 is a docket dealing with spent nuclear fuel. They retain the right to file an amended complaint under the Commission Orders. They are monitoring and evaluating pending decisions and other factors to determine if and when to re-file. U-13808, U-13808R, Court of Appeals is the 2004 PSCR for Detroit Edison consolidated with the general rate case. The appeal issue they are pursuing deals with spent nuclear fuel. U-13917, U-13917R, Court of Appeals is the 2004 PSCR for Consumers Energy. They are in appeal of the plan case on a spent nuclear fuel issue. U-13919, et. cetera, Court of Appeals involves INM Power's 2004 PSCR. They are also appealing a spent nuclear fuel issue. All the Court of Appeals' decisions are pending. U-14150 was Consumers Energy's last decommissioning case for the Palisades plant. A report was due March 30th. That was changed pursuant to Commission action. U-14272, U-14274R are the 2005 PSCR Plan and reconciliation cases for Consumers Energy. The plan case is finished. The reconciliation is nearly settled. U-14275, U-14275R is Detroit Edison's 2005 PSCR plan and reconciliation. The plan case is finished and the reconciliation case is in briefing. Exceptions were filed to the PFD. The issue deals with the exclusion of the residential customer class from receiving a share of a refund credit for the collection and rates for more pension expense than was incurred. U-14701, Court of Appeals was the 2006 PSCR plan case for Consumers Energy. The appeal is based on the ALJ and Commission striking expert evidence on energy efficiency and resource planning issues from the record and rejecting testimony on the impending sale of Palisades. Rose asked if this gets back to the Commission not recognizing conservation mechanism in Act 304. Keskey argued that Act 304 is the most comprehensive planning statute we have relative to energy supply costs. Rose noted that this is an ongoing argument. Rose asked if there was any problem with standing in this particular case. Keskey responded no. A discussion of standing ensued.

U-14702, 2006 PSCR plan case for Detroit Edison is the subject of a rehearing petition by MEC/PIRGIM that is pending Commission decision. Again, the ALJ struck all expert evidence on energy efficiency and energy resource planning cost limitation strategies. It is not final and appealable until the rehearing order is issued. U-14992 is the Palisades PPA case. A copy of the Order was distributed to the Board. U-15245 is the rate case filed with the MPSC last Friday. Many issues in the plant sale were deferred to the rate case including the dispute about the failure to deposit the Big Rock surcharges into the Big Rock decommissioning fund. U-15001, U-15002 are 2007 PSCR cases For Detroit Edison and Consumers Energy. Testimony is in preparation for U-15001. Neither MEC/PIRGIM nor the Attorney General filed testimony in U-15001. This is based on determination of where the most critical issues are and spending your resources where you can hope to make the most impact. The issues in that case were not worth pursuing to the level of filing testimony. That does not mean they will not participate in the hearing and briefing. But primary effort will go to other cases. In the FERC cases, FERC has granted the applications along with a hold harmless provision to the ratepayers who are subject to FERC jurisdiction. This is a small percentage of ratepayers. However, wholesale ratepayers often pass costs through to retail ratepayers, so there is an impact on retail ratepayers. However, we do not believe an appeal of their decision to allow Palisades to be placed on a market-based rate-making process is an issue we can win. So we are continuing to focus to the MPSC proceedings. Wilsey asked if the rate case U-15245 was something that would be pursued under an existing proposal or would they be proposing that for the upcoming grant cycle? Keskey responded that he felt it could be handled in two possible ways, either as an approved item that can be charged under the current grant with expenditures under \$15,000 or proceeding on a pro bono basis until the next grant cycle. Wilsey noted there was no proposal or item for the board so she wanted to clarify the grantees intent regarding participation and funding. It is listed on the docket report but it is not an approved item and there was no amendment proposal or otherwise submitted. Wilsey also asked about the joint filing with local units of government in the case. Keskey responded that it was a consortium of local entities that intervened in the Palisades' case U-14992. Wilsey asked who was representing them. Keskey responded Dick Reed from the law

firm Reed and Allen in Kalamazoo. They raised concerns about adequate decommissioning of the plant, the adequacy of resources of the purchaser, spent nuclear fuel, emergency preparedness on the local level and lack of resources to respond to safety situations. NRC Case Docket 50-255 deals with Palisades license transfer and plant transfer. The matter has been postponed.

Rose asked the grantees if, in their opinion, they are involved through UCRF grants in every case of significance involving gas or electric before the MPSC? Shaltz responded that there are some important cases that cannot be directly tied to Act 304 and therefore, do not qualify for funding. However, of the GCR and PSCR cases, there are possibly a few issues under the PSCR context that are not being addressed now, but all the cases with significant issues are being covered.

B. Attorney General – No report.

C. Financial - Terri Eklund provided a financial report (attached and included by reference to these minutes). Wilsey asked if grants from previous years ever expire? Eklund responded that it is held in encumbrance until it is closed out. Rose asked if there was anything encumbered further back than 2006. Eklund responded no. Isaac asked if the total amount of money, including the 15% withholding until final report, is included in the grant amounts on the financial statement? Shaltz noted that the authorized grant figure on the report includes the 15% final payment.

D. Administrative – Rose noted that the Keskey appeal was submitted just prior to the meeting and Ms. Droste from DLEG is not available for discussion. Questions that he has are: 1) What in the grant specifically requires that a grant can only terminate on the contracted for termination date?; 2) Can a grant be closed prior to its scheduled termination date, if all other final conditions are met?; and 3) does the Board have the authority to terminate a grant early because of full, complete and satisfactory performance and the grantee has submitted a final invoice for payment? Keskey noted that they were not asking for early termination of the grant. The board extended the termination date on the grant to allow work to continue. They are trying to stretch out the remaining budget. Wilsey asked if he was referring to the \$5,600. Keskey responded the remaining budget is \$5,606.09 after billings through October 2006. They have submitted additional billings for November, December and will submit for February. A report was submitted February 5, 2007. It will be supplemented by a final performance report when the grant period is over. Does the 15% holdback requirement mean a stop payment until the grant termination date? The appeal was an attempt to highlight a practical issue for the Board to consider for future grant contracts. Kostielney noted that the grant cycle and fiscal cycles do not correspond and this presents problems. She questioned whether the Board has the authority to make decisions relative to certain requested variances or exceptions? She felt making a policy based on this one request is misguided. She felt looking at and understanding the Board's current flexibility in making a decision relative to the specific request was a better approach. The grant administrator is following policy and made a determination based on that policy. Mr. Keskey can't control the scheduling or case process. Kostielney suggested moving on the request and at least get clarity on what the board can and cannot do. Isaac noted that Keskey has been aware of the decision since March 7. If it was a concern he should have acted on good faith and provided notice to the board and copied the attorney general for research and clarification of issues and possible remedies. Keskey did not oppose having it addressed at the next meeting. The delay was due to casework and considering whether to pursue it at all. He felt the discussion would help address practical issues and lead to improvements in the contracts. Wilsey noted that the appeal seemed premature. She encouraged the board and grantees to first consider cooperative, internal resolutions. If they fail, any appeal should offer clear facts and specific recommendations to the board for determination. Kostielney agreed that the larger issued of authority and responsibility of the board and at some point, sorting out the conflict between the grant cycles and fiscal calendar. Keskey commented that the conflict is not between the grant cycles and fiscal year as much as it is between the grant cycles and casework. Rigidity is the

problem. Kostielney noted that the focus must remain on the mission of the board and purpose of the legislation – to protect residential ratepayers from unfair incursions of costs or unreasonable policies and practices that sometimes occur and hurt poor people. That has to be our driving force, both administratively and by the grantees. Rose noted that the board can put no more in the contract than can be interpreted from statute. So the grant agreement can certainly be looked at for the next cycle to see what if anything in conjunction with counsel and the Department could be amended. He suggested that the board should have a book of any and all correspondence from the Attorney General in a book for reference. He asked Mr. Liskey and Mr. Moody to provide all past correspondence for board reference. On this matter he is hesitant to proceed without legal counsel. He suggests looking at the legislation and perhaps identifying areas in which the Board feels it should have more power in the statute and rules, and/or where we have sufficient authority and are not exercising our powers as fully as we could. He suggested that the Attorney General, Mr. Keskey and Ms. Droste work together to frame the issue, make sure we have salient facts, and then advise the Board of options. Rose moved, second by Isaac and motion carried to refer the appeal by Mr. Keskey's clients to the Attorney General and the Department to work in conjunction with one another as necessary to clearly identify the issues, frame the issues, and to resolve that matter within the Department and Board's authority under the Act, and provide the board with copies of those opinions or memo at your earliest convenience. Rose also requested that the legal opinion is confidential, drafted with a legal privilege, and distributed to the board first so that the report can be assessed and comments made prior to full distribution.

VI. Old Business

Wilsey presented the draft of the 2005 Annual Report to the board for review. She explained changes from previous reports and reviewed the structure. She identified a few remaining financial questions that needed to be resolved. An electronic version would be provided to the board and any final comments were welcome. It would then be finalized and submitted with the Chairman's signature.

VII. New Business

Wilsey presented a draft "Notice of Availability of Funds" for the 2008 grant cycle for review by the Department and Board. She noted the timing of the 2007 cycle seemed very tight. It would not be practical for new grantees to apply under such a timeline. She asked for input and guidance on setting the dates for 2008. Isaac asked if funds were available for education and awareness training about the grant? He also asked if some of the recommendations of the audit report were addressed in the annual report? Wilsey replied that the restructuring of the report was very much guided by the anticipated audit issues. Kostielney suggested that one of the things that could be included in the annual report is a more clear description of who is represented by the grantees that receive UCRF funding. The current grantees are not single persons or groups but represent thousands of Michigan citizens. Wilsey and Shaltz discussed the current description. Kostielney felt it was important to elaborate and illustrate the scope of that coverage. Rose agreed that the number should be quantified more explicitly. Kostielney requested a copy of the Attorney General's 2005 Annual Report since they are collaborators and participants in the Act 304 process. Rose commented that ratemaking is an area that is not directly covered under the board's authority. Because these groups are affected as much by rates as they are by the cost recovery process, perhaps the board needs authorization via legislative amendment to get into the ratemaking function. Wilsey noted, this proposal could be added into the legislative update section of the annual report if it was a position adopted by the board.

Rose moved, second by Kostielney and motion carried to accept the PIRGIM Electric Restructuring "Lessons Learned" study.

Wilsey raised the question of distribution of the study. Keskey commented that distribution was the responsibility of PIRGIM as the sponsoring organization. Wilsey asked Keskey, since he worked with PIRGIM on the report, if he knew whether they had plans to publicize or distribute the report? Keskey thought they did and make a follow-up inquiry.

Kostielney emphasized the importance of the Board maintaining independent and objective. They should not become a participant or collaborator in the findings or outcomes of the grantees.

Rose moved, second by Kostielney and motion carried to table discussion of the audit report.

Wilsey noted the question of 2008 grant cycle dates was not resolved. Shaltz commented that it generally has been driven by the timing of the first cases to be covered by the grant. Those are the PSCR cases of the electric utilities. They are filed by the end of September. Grantees have to be in a position by October 1st to start work on those cases. Based on what Ms. Droste reports is the time needed for the State Administrative Board to approve those grants, his understanding is that the board is free to set the schedule for making a decision on grants. Rose asked if the board should have approval and effective date by September 30th, which is the end of the old fiscal year? Shaltz responded that historically these decisions were not made around fiscal years but October 1st has been convenient to fiscal years. Rose commented that he thought the Administrative Board meets every two weeks. Wilsey noted she work with Robin and LeAnn to answer those questions and establish the schedule. Rose concurred. Wilsey asked if she should then have them proceed with distribution of the revised Notice of Grant Availability. Rose said yes. Rose asked if those that receive the notice but do not apply for funding could be surveyed as to why they did not seek funding. Approaches for obtaining this information were discussed. The lack of participation by local units was discussed. Kostielney again raised the issue of what possible interests local units of government would have in Act 304 proceedings. Potential issues and approaches for participation were discussed and debated. Isaac reiterated his view that education and awareness were needed in order to expand interest in the grant program. Wilsey noted that she thought that in 2005 notice was sent directly to only nine (9) people. Kostielney commented that the year before the notice was sent out to hundreds, maybe thousands, with little effect. Wilsey commented that there could be some improvement in the notice language to make it more understandable and distribution could be expanded initially to those who work in the field. Strategic, incremental improvements may be more effective than broadcast efforts. Rose commented that people in the field would likely already know about the UCRF. Isaac argued that the Board cannot assume everyone knows about this board or grant program. He did not know about this when practicing. When asked to serve, he contacted an associate in Senior Management at Consumers Energy for information. He did not know about this. About nine or ten legislators that he contacted did not know about the Board. So, he again did not feel it was important to determine who should apply or be funded but rather to educate and let the best candidates come forward. Kostielney agreed as long as those represent the mission of protecting the ratepayer, particularly those who cannot afford to bear unreasonable utility costs.

VIII. Public Comment

None.

IX. Next Meeting

Rose announced the next meeting was scheduled June 4, 2007, 10:00 a.m., Ottawa Building, 4th Floor Training Room

X. Adjournment

The meeting adjourned at 1:06 p.m.

Note: Full transcripts of this meeting are available upon request.